

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

DELCHON WEATHERSPOON,

Petitioner,

V.

SHERIFF BILL OLDHAM, Shelby County
Sheriff's Office,

Respondent.

Case No. 17-CV-2535

NOTICE OF INTENTION TO SEEK A WRIT OF MANDAMUS

Respondent Sheriff Bill Oldham has jailed Petitioner Delchon Weatherspoon since January 1, 2017—more than thirteen months. No court has made a finding—let alone one that complies with the procedural requirements of the Due Process Clause—that Mr. Weatherspoon’s release poses such a danger to the community that he must be detained before trial.

On July 25, 2017, after exhausting his remedies in the state courts, Petitioner sought a writ of habeas corpus from this Court, asking that he be released unless the state courts conduct a procedurally valid hearing and find that clear and convincing evidence supports the conclusion that no alternatives short of pretrial detention would reasonably ensure the safety of the community. (Doc. 1, Petition.) On August 1, 2017, Petitioner respectfully requested that this Court consider the Petition as expeditiously as possible because each day of illegal detention does him irreparable harm. (Doc. 9.)

By October 2, 2017, Respondent had not responded to the Petition. Petitioner accordingly filed an emergency motion for an order to show cause why the Petition should not be considered unopposed or, in the alternative, requesting that Respondent be ordered to respond to the

Petition. (Doc. 10.) On October 10, 2017, this Court ordered the Respondent to respond. (Doc. 14, *as amended* Doc. 15.) On October 16, 2017, the Respondent responded *to the motion for an order to show cause*. (Doc. 18.) With leave of Court (Doc. 20), Petitioner filed a reply in support of his motion for an order to show cause, explaining that Respondent should be ordered to respond *to the Petition*. (Doc. 19-1.) On October 23, 2017, this Court ordered Respondent to do so and granted Petitioner's August 1 motion for expedited consideration. (Doc. 20.) On November 6, 2017, Respondent responded to the Petition. (Doc. 21.) And on November 13, 2017, Petitioner replied. (Doc. 22.)

It is now February 7, 2018, and Petitioner is still in jail in violation of the United States Constitution. And Petitioner's trial has been scheduled for June 4, 2018. (Exhibit A, State Court Case Summary.) Because the party against whom this Court rules can appeal as of right, Petitioner may be irrevocably prejudiced if this Court does not rule on his Petition soon. Unless there is a mistrial, Petitioner will either be acquitted and released or convicted and sentenced; either way, his pretrial detention will be over. In the interim Petitioner is being jailed without the protections required by the Constitution. Accordingly, Petitioner files this notice to alert the Court of his intention to seek a writ of mandamus from the United States Court of Appeals for the Sixth Circuit if this Court has not ruled on his petition by February 14, 2018. *See McClellan v. Young*, 421 F.2d 690, 691 (6th Cir. 1970) (issuing writ of mandamus ordering district court to rule on habeas petition that had been pending for four months); *see also* Charles Alan Wright, et al., *Federal Practice and Procedure* § 3934.1 (3d ed. 2017) (discussing mandamus practice in the courts of appeals).

Respectfully submitted,

/s/ Charles Gerstein

Charles Gerstein (*pro hac vice*)
(DC Bar No. 1033346)
Premal Dharia (*pro hac vice*)
(DC Bar No. 484091)
Civil Rights Corps
910 17th Street NW, Suite 200
Washington, DC 20006
charlie@civilrightscorps.org
premal@civilrightscorps.org
(202) 670-4809

/s/ Amir Ali

Amir Ali (*pro hac vice*)
(DC Bar No. 1019681)
Roderick & Solange MacArthur Justice Center
718 7th Street NW
Washington, DC 20001
Amir.ali@macarthurjustice.org
(202) 869-3434

/s/ Emma Redden

Emma J. Redden (# 33501)
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
First Tennessee Building
165 Madison Avenue, Suite 2000
Memphis, Tennessee 38103
Telephone: (901) 577-8158
Facsimile: (901) 577-0882
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be served on all counsel of record via the CM/ECF System for the United States District Court for the Western District of Tennessee.

/s/ Charles Gerstein

Charles Gerstein